



Exempt Action Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-630-10 et seq.
Regulation title	Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management
Action title	Reissue and amend, if necessary, the Virginia Pollution Abatement General Permit for Poultry Waste Management.
Document preparation date	3/17/2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The State Water Control Board is amending the existing Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management in order to reissue the permit regulation. The VPA General Permit Regulation for Poultry Waste Management governs the management of poultry feeding operations which confine 200 or more animal units (20,000 chickens or 11,000 turkeys), and establishes utilization, storage, tracking and accounting requirements related to poultry waste, including that transferred from poultry feeding operations. The general permit first became effective on December 1, 2000. The permit term was ten years, thus it is due to expire on November 30, 2010.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

In 1999, the Virginia General Assembly passed House Bill 1207 (62.1-44.17:1.1) establishing the Virginia Poultry Waste Management Program. The Act required the State Water Control Board develop a regulatory program governing the storage, treatment and management of poultry waste including dry waste. Virginia Code § 62.1-44.17:1.1 authorizes the State Water Control Board to establish and implement the Poultry Waste Management Program. The program established provisions for issuing general permits to confined poultry feeding operations. The general permit became effective on December 1, 2000. As of January 1, 2010 amendments establishing requirements for proper storage, land application and recordkeeping for end-users of poultry waste became effective.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of this action is to reissue the existing Virginia Pollution Abatement (VPA) General Permit for Poultry Waste Management. The current VPA general permit expires on November 30, 2010.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of the proposed regulatory action is the reissuance of the regulation which will allow for confined poultry feeding operations to be covered under the general permit. The permit contains provisions appropriate for the protection of state waters, and the general permit process allows for protection of water quality with minimum agency resources related to the issuance of the permit. This is an advantage for the public, the regulated community, as well as the Commonwealth. There are no disadvantages of the proposed regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements for confined poultry feeding operations that do not discharge or propose to discharge. The Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management is a state program with requirements included in the regulation necessary to meet state statutory requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This general permit regulation affects the entire state; no particular localities are identified to be disproportionately impacted by this regulatory action.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone 804-698-4059, fax 804-698-4116 and betsy.bowles@deg.virginia.gov**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by DEQ by the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

It is not anticipated that the reissuance of this regulation will cause any economic impacts in the Commonwealth.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Currently, 894 confined poultry feeding operations are covered under this general permit. One alternative to the reissuance of the VPA General Permit for Poultry Waste Management is to issue coverage under an individual VPA permit to each poultry feeding operation which confines 200 or more animal units. However, due to the number of confined poultry feeding operations currently required to obtain coverage under a VPA permit, it is not practical to issue coverage to each operation under an individual VPA permit. Operations that do not qualify for coverage under the general permit will be issued coverage under an individual VPA permit.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation includes authorization for coverage under the general permit as well as establishes the utilization, storage, tracking and accounting requirements related to poultry waste. The use of the general permit is the alternative to issuing coverage under an individual Virginia Pollution Abatement (VPA) permit. Compliance with the technical requirements is an alternative for poultry waste brokers and end-users to requiring coverage under the general permit or an individual VPA permit.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Written comments were submitted by 4 organizations: all were in support of the reissuance of this permit regulation. The comments are provided in the preceding pages. Agency Response to NOIRA Comments: all of the comments received for the NOIRA were provided to the members of the Regulatory Advisory Panel for consideration during the draft regulation development process.

Comment	Commenter	Affiliation	Category
<p>The current VPA general permit, set to expire November 30, 2010, conforms to the intent of the authorizing legislation. The Department of Environmental Quality has successfully operated and achieved a very high rate of program compliance among permitted poultry operations. Given the levels of producer program compliance and industry support for assisting producers and the state in managing poultry waste, we oppose additional requirements that unduly burden permitted producers in the reissue of the existing VPA General Permit for Poultry Waste Management.</p> <p>Action to modify the current Virginia Pollution Abatement Permit Regulation for Poultry Waste Management is underway in a prior and separate effort. The proposed amendments would extend the regulatory authority to end-users of poultry waste. Pending the outcome of the proposal to amend the regulation in this prior ongoing action, we reserve additional comment on this action to reissue the regulation.</p> <p>We believe that any Technical Advisory Committee (TAC) established to advise the agency on the regulatory proposal include permitted poultry growers from across the state. The TAC should also include poultry waste brokers and end-users in the event the regulation is extended to these individuals. Virginia Farm Bureau has been involved with this regulation since its genesis and would appreciate an opportunity for a member of our staff to participate on this TAC as well.</p>	Wayne F. Pryor	Virginia Farm Bureau Federation	Support
<p>The Council would urge DEQ to reissue the VPA General Permit for Poultry Waste Management in its current form. Our members in the poultry industry have come into compliance with the provisions of this regulation, and believe that the permit requirements, inspections, and enforcement provisions of the regulation are adequate. In addition, with proposed changes to the VPA Permit Regulation for End-Users of Poultry Litter currently undergoing public comment prior to final consideration by the State Water Control Board, we believe that making substantial changes to another part of this regulation at this time is not necessary. The provisions of the current law provide for environmental protections on poultry operations and meet the statutory requirements of the law.</p> <p>If a Technical Advisory Committee (TAC) should be formed during the process of reissuing or amending this regulation, the Virginia Agribusiness Council would like to request that a representative be included as a member of the TAC. The Council's membership includes poultry growers and processors who will be impacted by changes to this General Permit.</p>	Katie Kyger Frazier	Virginia Agribusiness Council	Support

Comment	Commenter	Affiliation	Category
<p>Our only comment is that we are interested in this regulatory action and wish to participate in any public participation activities scheduled by the department.</p>	<p>Hobey Bauhan</p>	<p>Virginia Poultry Federation</p>	<p>Support</p>
<p>Shenandoah Riverkeeper urges the State Water Control Board to re-issue this permit which is critical both to safeguarding state waters from pollution that has long been documented to occur with unregulated use of poultry waste (litter), and to satisfy requirements of House Bill 1207 and corresponding Virginia Code. Prior to regulatory guidance, the record demonstrates that the farming community used poultry litter in a manner that may have been effective at growing pasture, hay and row crops but was not protective of state waters. For consistency, I would like to submit the same arguments for the re-issuance of this permit as I have for the necessity of regulating the brokering and end-user community. These arguments apply to litter use on the farm of origin and off.</p> <p>Section I of Article XI of Virginia’s Constitution reads that “it shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.” Nearly a decade ago, The Commonwealth’s House Bill 1207 and its subsequent regulations were an important first step in addressing the pollution problems associated with decades of over-application of poultry waste on agricultural lands.</p> <p>Shenandoah Riverkeeper contends that these problems are thoroughly documented, and have been the subject of intense scientific study and scrutiny for more than a decade. We also contend that the current regulations are not protective of our land and our state waters and that the proposed changes in the regulation are imperative if we are to begin to turn around the over-nutrication problems in the Shenandoah Valley and in the Chesapeake Watershed.</p> <p>The Shenandoah Riverkeeper’s mission is to “Use citizen action and enforcement to protect and restore water quality in the Shenandoah Valley for people, fish and aquatic life”.</p> <p>Shenandoah Riverkeeper, along with Potomac Riverkeeper (Shenandoah Riverkeeper operates under 501(c)(3) Potomac Riverkeeper Inc) have over 2300 paid members comprised of landowners, canoers, paddlers and fishermen who join our organization so that their voices and concerns can be heard through our actions. Shenandoah Riverkeeper’s members are affected extensively by the waste disposal practices of poultry growers and by “off-site farms” which receive and use litter for soil nutrient amendment, and it is for that reason that I am commenting on this NOIRA.</p> <p>Shenandoah Riverkeeper believes that the land over-application of poultry litter in the Shenandoah Valley is its single greatest issue, and the single largest source of phosphorous leading to eutrophication, poor water chemistry and possibly fish health problems faced by our river.</p> <p>Shenandoah Riverkeeper requests the opportunity to be included on the Technical Advisory Committee. We look forward to working with the Commonwealth and with other stakeholders in producing a regulation that protects water quality.</p>	<p>Jeff Kelble</p>	<p>Shenandoah Riverkeeper</p>	<p>Support</p>

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability, including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that the reissuance of this regulation will have any impacts on the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The proposed changes to the regulation are outlined on the following page

Regulation Section	Action	Change	Rationale
9VAC25-630 (Chapter Title)	Amended Title of Chapter	Amended to read: VIRGINIA POLLUTION ABATEMENT REGULATION AND GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT	Amended Title to clarify that this Chapter includes both the general permit and technical requirements outside of the general permit.
9VAC25-630-10. (Definitions)	Amended definition	Amended nutrient management plan definition to read: "Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; <u>except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit the requirements of 9VAC25-630-80 constitute the NMP.</u>	Added language to clarify the ability to use section 9VAC25-630-80 as a nutrient management plan so as to comply with § 62.1-44.17:1.1 which states the regulatory program must ensure proper storage of waste consistent with the terms and provisions of a nutrient management plan. The waste storage provisions contained in section 80 of 9VAC25-630 are consistent with the terms and provisions of a nutrient management plan.
9VAC25-630-20. (Purpose, delegation of authority)	Amended subsection A.	Removed "general permit" from subsection A	Removed language since this is not just a general permit regulation.
		Removed "Pollution", replaced with " <u>Pollutant</u> "	Substituted correct term
	Amended subsection C.	Amended effective date of the permit	Amended date for reissuance
9VAC25-630-25. (Duty to comply)	Added new section	Added new section which includes language regarding the duty to comply with the regulation and general permit by the poultry grower, poultry waste broker and poultry waste end-user.	Added new section to clarify the duty to comply with the regulation and general permit
9VAC25-630-30. (Authorization to manage pollutants)	Amended subsection A.	Removed "provided that"	Language was redundant in subsection
	Amended subsection A.1.	Removed "Pollution", replaced with " <u>Pollutant</u> "	Substituted correct term
	Amended subsection A.3.	Removed "considered"	Clarify the prohibition
	Amended subdivision A.4.	Amended language regarding requirement to obtain NMP. Amended to remove language regarding an obsolete date	Amended to clarify that the poultry grower is to obtain the approval of the NMP from the Department of Conservation and Recreation Date is obsolete and no longer necessary

Regulation Section	Action	Change	Rationale
9VAC25-630-30. (Authorization to manage pollutants) (continued)	Amended subdivision A.5.	Added language to clarify the timing of the adjoining property notification " <u>Prior to filing</u> " Removed "When a poultry grower files"	Amended to clarify when the adjoining property notification must be completed
	Amended subdivision A.6.	Added " <u>permitted</u> " to clarify that the permitted grower is required to complete a training program	Clarifies who is required to complete the training program
	Amended subsection B.	Removed language: "who receives transferred poultry waste" and "regarding utilization, storage, and tracking, and accounting of poultry waste in his possession or under his control" Added " <u>or the general permit as applicable</u> "	Removed redundant language - the language is in the poultry waste end-user and broker definitions Added for further clarification of requirements
	Amended subsection B.2.	Removed "provided that"	Language was redundant in subsection
	Amended subdivision B.2.c.	Amended language regarding requirement to obtain NMP. Amended to remove language regarding an obsolete date	Amended to clarify that the poultry grower is to obtain the approval of the NMP from the Department of Conservation and Recreation Date is obsolete and no longer necessary
9VAC25-630-50 (Contents of the general permit)	Amended General Permit Dates	Revised effective and expiration dates Removed modification dates	Amended dates for reissuance
	Amended Part I.B.2.	Added language to clarify adequate storage " <u>or at a site</u> " Added language: <u>d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.</u>	Clarify the language Added requirement to permit language for consistency of the storage requirements found in section 80 of 9VAC25-630. This is not a new requirement since the requirement is already in the special conditions of the permitted grower's nutrient management plan.
	Amended Part I.B.5	Removed "considered"	Clarify the prohibition
	Amended Part I.B.6.	Amended to remove language regarding an obsolete date	Date is obsolete and no longer necessary

Regulation Section	Action	Change	Rationale
9VAC25-630-50 (Contents of the general permit) <i>(continued)</i>	Amended Part I.B.8.	Amended language regarding the nutrient management plan requirements.	Clarify the language
	Amended Part I.B.9.	Amended language regarding the nutrient management plan requirements including removing obsolete dates.	Clarify the language
	Amended Part I.B.11.	Added " <u>Poultry waste shall not be land applied within buffer zones</u> " to clarify restriction	Clarify the prohibition
	Amended Part III.B.2.	Added language to clarify adequate storage " <u>or at a site</u> " Added language: d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.	Clarify the language Added requirement to permit language for consistency of the storage requirements found in section 80 of 9VAC25-630.
	Amended Part III.B.9.	Removed "considered"	Clarify the prohibition
	Amended Part III.B.10.	Amended to remove language regarding an obsolete date	Date is obsolete and no longer necessary
	Amended Part III.B.12.	Amended language regarding the nutrient management plan requirements.	Clarify the language
	Amended Part III.B.13.	Amended language regarding the nutrient management plan requirements including removing obsolete dates.	Clarify the language
	Amended Part III.B.15.	Added " <u>Poultry waste shall not be land applied within buffer zones</u> " to clarify restriction	Clarify the prohibition
9VAC25-630-80 (Utilization and storage requirements for transferred poultry waste)	Amended subsection C.1.(c)(2) and C.1.(c)(3)	Amended language to clarify the specific subdivision of the regulation promulgated by the Department of Conservation and Recreation	Clarify the language
	Amended subsection C.2.	Amended language to clarify the specific subdivision of the regulation promulgated by the Department of Conservation and Recreation	Clarify the language
	Amended subsection C.3.	Added " <u>Poultry waste shall not be land applied within buffer zones</u> " to clarify restriction	Clarify the prohibition
	Amended subsection D.	Removed "or", replaced with " <u>and</u> "	Corrected typographical error